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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,593	12/13/2000	Thomas Fruh	Mo-5861/RC-208	5722

7590 07/14/2004

Patent Department
Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-9741

EXAMINER

MULCAHY, PETER D

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 13

Serial Number: 09/736,593
Filing Date: December 13, 2000
Appellant(s): Früh et al.

Jennifer Seng
For Appellants

EXAMINER'S ANSWER

MAILED
JUL 14 2004
GROUP 1700

This is in response to appellants' Brief on appeal filed April 23, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the Brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the Brief.

(3) Status of Claims

The statement of the status of the claims contained in the Brief is correct.

This appeal involves claims 4-11.
Claims 1-3 have been canceled.

(4) Status of Amendments After Final

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No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the Brief is correct.

(6) Issues

The appellants' statement of the issues in the Brief is correct.

(7) Grouping of Claims

The appellants' statement in the Brief that all claims stand or fall together is agreed with by the Examiner.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the Brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

3,354,131	Trivette, Jr. et al.	11-1967
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(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 4-11 are rejected under 35 U.S.C. 102(b) or in the alternative 103(a). This rejection is set forth in prior Office action, Paper No. 12 mailed December 1, 2003.

(11) Response to Argument

Appellants' primary point of contention with respect to the rejection of record has to do with the claim language "for the mastication of rubbers." Appellants argue that Trivette, Jr. et al. discloses an improved vulcanization process wherein the organic sulfide compound which happens to be the same, as that claimed, functions as a vulcanization inhibitor. Appellants go on to point out that the rubber composition of the prior art is vulcanized and that the vulcanization of the rubber is essentially the opposite of the mastication or softening of the rubber as intended by the instantly claimed invention. This is not persuasive.

The instantly claimed invention is directed to a method which is seen to be limited by the physical step of mixing the rubber and the dialkyl polysulfide as defined in the claim. The language "for the mastication of rubbers" is not seen to be limiting, but rather an intended result obtained by the physical step of mixing the rubber and the polysulfide compound. The prior art is clear as to the mixing of the polysulfide compound with the rubber compound. Appellants do not argue that the method step of mixing is shown within the prior art. It is true that the prior art does not mention the masticating effect of the

polysulfide compound when added to the rubber. The prior art is concerned with prevulcanization and specifically the inhibition thereof specifically by incorporating the polysulfide compound into the rubber. The fact that the rubber composition of the prior art is intended to be vulcanized at some point is simply not germane to the patentability of the claims on appeal. The instantly claimed method step and the ingredients utilized therein is anticipated by the prior art. The fact that the prior art does not discuss a masticating effect of the polysulfide when added to the rubbers is not relevant. Furthermore, it is reasonable to presume that the polysulfide of the prior art when mixed with the rubbers of the prior art would have a masticating effect on the rubber. Case law has well established that when the reference discloses all the limitation of a claim except a function, it is reasonable to presume that the reference would inherently possess properties which anticipate or render obvious the claimed invention. Appellants have provided no showing or advanced any allegation that the rubber composition of the prior art is not masticated. The fact that the prior art identifies a vulcanization step does not mean that the vulcanization inhibitor, i.e. the polysulfide does not masticate the rubber prior to vulcanization. Furthermore, the fact that cross-linking

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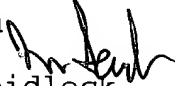
is the opposite of masticating is not relevant. The prior art shows the incorporation of the polysulfide prior to vulcanization. This step of mixing the polysulfide prior to vulcanization is seen to anticipate the claims and is presume to have a masticating effect on the rubber. Appellants do not argue that such is not the case. Furthermore, appellants' specification at page 8 discusses the use of the masticated rubber having the polysulfide added thereto as being vulcanized by conventional vulcanization processes and vulcanizing agents. This is seen to be the same use as advanced by the prior art.

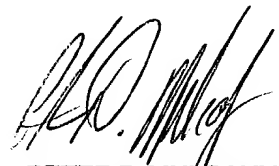
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:


David Wu


James Seidleck


PETER D. MULCAHY
PRIMARY EXAMINER

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July 12, 2004